

October 27, 2003

A. Lavar Taylor  
6 Hutton Centre, #880  
Santa Ana, CA 92707

**Re: Our File No. E-03-004**  
**Form 700 – Statement of Economic Interests**

Dear Mr. Taylor:

Your Form 700, Statement of Economic Interests, filed as a gubernatorial candidate has been referred to me for review and/or response. Schedule A-2 requires that you list the names of each reportable single source of income of \$10,000 or more. On your Schedule A-2, you referenced an attachment wherein you withheld disclosure of the identities of 23 clients as economic interests upon the basis of attorney-client privilege.

The procedure for nondisclosure of an economic interest based upon an assertion of privilege under California law is set forth at Title 2, California Code of Regulations section 18740 as follows:

“An official need not disclose under Government Code Section 87207(b) the name of a person who paid fees or made payments to a business entity if disclosure of the person’s name would violate a legally recognized privilege under California law. Such a person's name may be withheld in accordance with the following procedure:

“(a) An official who believes that a person’s name is protected by a legally recognized privilege may decline to report the name, but shall file with his Statement of Economic Interests an explanation for such nondisclosure. **The explanation shall separately state for each undisclosed person the legal basis for assertion of the privilege and, as specifically as possible without defeating the privilege, facts which demonstrate why the privilege is applicable.**

**“(b) With respect to *each undisclosed person*, the official shall state that to the best of his knowledge he has not and will not make, participate in making, or in any way attempt to use his official position to influence a governmental decision when to do so constituted or would constitute a violation of Government Code Section 87100.**

**“(c) The Executive Director may request further information from the official and, if no legal or factual justification sufficient to support assertion of the privilege is shown, may order that the disclosure required by the Act be made. The official shall, within 14 days after receipt of an order from the Executive Director, either comply with the order or, if he wants to challenge the determination of the Executive Director appeal the determination, in writing, to the Commission.**

“(d) If the Executive Director determines that nondisclosure is justified because of the existence of a privilege, the matter shall be referred to the Commission.

“(e) The Commission shall review an appeal filed under paragraph (c) or a recommendation made by the Executive Director under paragraph (d) at a meeting held no less than 14 days after notice of the meeting is mailed to the official, the Attorney General and both the district attorney and the city attorney of the jurisdictions in which the official's residence and principal place of business are located. The Commission shall decide whether nondisclosure is warranted by issuing an opinion under Government Code Section 83114 and shall treat the explanation for nondisclosure accompanying the official's Statement of Economic Interests as an opinion request. The procedures set forth in 2 Cal. Code of Regs. Sections 18320-18324, however, shall not apply to opinions issued pursuant to this regulation.

“(f) If the Commission orders an official to disclose, the official must comply within 14 days. The Executive Director may, for good cause, extend any of the time periods established in this regulation.” [Emphasis added.]

As your basis for nondisclosure of 23 client identities, you have provided a general statement that “most of the cases involve sensitive matters which are not of public record.” You have also cited general concerns regarding tax return information and your potential liability under 26 U.S.C. section 6103.

While you have asserted the attorney-client privilege as a bar to disclosure, you have not complied with the requisite procedure of regulation 18740(a) and (b) above. Regulation 18740(a) specifically requires an explanation of *each* nondisclosure, giving the legal basis for the assertion of the privilege and the facts which demonstrate why the privilege is applicable. Without identifying the clients or disclosing privileged communications, such information should include the basis as to why the disclosure of the identity of each undisclosed client may expose him or her to criminal or civil liability. Therefore, I am requesting that you further provide such specific information in support of the basis for nondisclosure of the identities of the 23 clients on your Statement of Economic Interests.

Regulation 18740(b) requires you to state that, with respect to each undisclosed person, to the best of your knowledge, you will not be making, participating in making or influencing a governmental decision that would in any way violate Government Code Section 87100 (conflicts of interests).

If you wish to avail yourself of the regulatory procedure, you must comply with these two subdivisions. Upon receipt of this information, I will make a determination of the matter under subdivisions (c) and (d) above.

Also, please be advised that the California Supreme Court has already upheld the disclosure of client identities in relation to threshold economic disclosures under the Political Reform Act, against a blanket assertion of the attorney-client privilege. (*Hays v. Wood* (1979) 25 Cal. 3d 772, 784-785 [160 Cal. Rptr. 102].)

Your response should be submitted in writing no later than 10 days from the date of this letter or your request will be deemed not to satisfy the requirements of regulation 18740. Please feel free to contact me at 322-5785, should you have any questions regarding the above procedure.

Sincerely,

Mark Krausse  
Executive Director